MENTAL HEALTH LAW PROFILE

Mental health legislation in Luxembourg, a small country in Western Europe

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The article provides a brief overview of the legislation governing involuntary admissions to psychiatric hospitals in Luxembourg. The legislation was completely overhauled in 2009 and several human rights principles are enshrined into it. Emphasis is placed on voluntary, community-based treatment, and where compulsory treatment is required, it uses the least restrictive treatment option. Mentally ill offenders are dealt with through separate specialist legislation. Young people under the age of 18 are often detained using family law.

Legislation in Luxembourg is based on the Napoleonic Code and influenced by neighbouring countries.[1–3] The Napoleonic Code is codified in the form of statutes and includes mental health legislation fulfilling similar functions to the Mental Health Act in Britain. Legislation of relevance to general and forensic psychiatry is enshrined in civil law[4] and criminal law.[5] Minors are commonly detained under family law.[6]

Underpinning principles and grounds for compulsory hospital admission

Current legislation governing involuntary hospital admission and treatment of persons with mental illness dates from 2009,[4] replacing pre-existing legislation. It fulfils similar functions to mental health acts in other countries.

The underpinning principles follow World Health Organization guidance.[7] An emphasis on community care, social inclusion and the safeguarding of human rights favours patients being treated in the least restrictive manner possible. It distinguishes between compulsory hospital admission and compulsory treatment.

Mental disorder is not specifically defined in the legislation. Neither age-related cognitive decline nor a lack of conformity to the prevailing moral, social or political norms can in themselves be considered a mental disorder. The threshold for compulsory admission is set high; only those presenting a significant risk of harm to themselves or others in the context of serious mental disturbance, and refusing voluntary treatment, can be compulsorily admitted to hospital.

Choice of treatment should take into account patients' individual beliefs and opinions, and optimise physical health and family and social contacts, and provide opportunities for spiritual and cultural fulfilment. Community reintegration should be the overarching aim.

Furthermore, the explicit aim of any compulsory treatment, in practice medication, seclusion or physical restraint, must be the reduction of specific clinical symptoms. Where several treatment options exist, the least invasive option must be chosen. Treatment must be overseen by psychiatrists and must be fully documented.

Hospitals providing psychiatric services are legally required to adhere to minimum architectural, occupancy and staffing standards.

Procedures for compulsory admission

Decisions regarding compulsory hospital admission are taken by a judge specifically appointed for this purpose. An application for compulsory admission requires a written request from the legal guardian, a family member, the local mayor, the chief of police or director of detention facilities or the chief prosecutor for the district in which the person is located at the time of the application.

Applications from the last three categories are eligible only in emergencies where public order or safety are compromised. The written application must be received within 24 h of admission; otherwise, the patient must be released.

The patient must be admitted with a medical certificate not older than three days provided by a doctor without employment links to the admitting psychiatric hospital after personal examination of the patient, attesting the presence of recognisable mental disturbance, significant risk of harm to self or others and the refusal of voluntary treatment. Exceptions apply to mentally disordered offenders.

The judge can order the person to be detained for a period of observation and assessment, not exceeding 30 days. By the sixth day after admission, the treating psychiatrist must provide a written report to the judge. Within 3 days, the judge must then decide to prolong the observation period, or request additional information from the treating doctor or release the patient. Where the observation period is prolonged, the patient has no right of appeal.

Within the observation period, the treating psychiatrist must provide a second written report to the judge clarifying the likely diagnosis and recommending ongoing compulsory hospitalisation or not.

The judge hears written and oral evidence summarising the views of the treating psychiatrist.

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The views of the patient, who can be assisted by a person of their choice, as well as their legal representative, are also heard. Within 48 h of this hearing, the judge provides a written decision, ordering either the release of the patient or their ongoing compulsory hospitalisation. Thereafter, if a prolonged period of hospital treatment is required, the patient is transferred from the acute psychiatric ward in the general hospital setting to an appropriate service within the national, specialist rehabilitation psychiatric hospital.

Discharge from hospital following compulsory admission

There is no direct right of appeal against the judge's decision regarding compulsory admission to hospital. However, the patient or a relevant interested party can request their release from hospital at any time by making an application to the district court, which hears the application according to specific procedures and timelines.

The treating psychiatrist can revoke the order at any time and inform the judge that compulsory treatment has ended. The patient can continue the in-patient treatment voluntarily.

Trial leave from hospital and continuation of compulsory treatment in the community for up to 1 year may be granted, usually with specific conditions attached. Typically, these include adherence to therapy and medication regimes, conditions of residence and alcohol and drug screening. Any failure to adhere or any deterioration in the patient's mental state must be communicated to the judge, who can order the revocation of the leave.

The monitoring commission

An independent commission comprising a sitting judge, a psychiatrist and a social worker oversees the longer-term compulsory hospitalisation of patients. A review takes place 1 year after the compulsory admission was first authorised, and every 2 years thereafter. The commission hears written and oral evidence from the treating psychiatrist and decides whether to release the patient immediately, to order a period of up to 3 months trial leave or to maintain the compulsory hospitalisation. There is no legal obligation for the independent commission to solicit or hear the views of the patient.

Specialist populations

Mentally disordered offenders

No separate legislation exists to cover the compulsory hospital admission of remand and sentenced prisoners. Until very recently, prisoners requiring compulsory psychiatric care were initially admitted to a psychiatric ward in a general hospital, where they remained until the judge confirmed or refuted the need for compulsory treatment. Recognising that general psychiatric wards are not equipped to accommodate the special care and security needs of prisoners, a derogation to the existing legislation was introduced in March 2020, allowing mentally unwell prisoners to be admitted directly to the specialist forensic service.

Criminal law covers mental health disposals ordered by criminal courts. Two disposals are possible, broadly equating to the concepts in other jurisdictions of diminished, or lack of, criminal responsibility for the offence because of psychiatric illness. These disposals can apply irrespective of the nature and/or gravity of the offence. Both disposals require the provision of expert written evidence to the court, usually provided by a psychiatrist. In the case of diminished responsibility, the judge takes the underlying mental disturbance into consideration at sentencing but does not impose psychiatric/psychological treatment on the offender and the disposal remains a criminal justice one.

Where a person is deemed to lack criminal responsibility for the offence, they receive a mental health disposal and are compulsorily admitted to the forensic in-patient service. An appeal can be lodged within 5 days of the decision. Neither the offence nor the mental health disposal appears on the person's criminal record.

An independent specialist commission, comprising two legal and two medical members, including one psychiatrist, oversees the treatment and leave of persons subject to a mental health disposal, at least yearly.

On the request of the treating psychiatrist, the independent specialist commission can grant a period of prolonged trial leave during which the patient is subject to medical, psychological and social follow-up. Failure to adhere to any of the imposed conditions results in hospital readmission. The mental health disposal can be terminated in two ways: either the independent specialist commission can revoke it or patients can apply to the district court, which hears the application according to specific procedures.

Young people

Child protection legislation[6] is commonly used to compulsorily admit young people with mental disorders. Adult legislation as outlined above has been used, albeit rarely.

Under child protection legislation family judges use their discretion to order interventions for young people whose 'physical or mental health or social or moral development' is compromised. In addition to mental illness, this includes school refusal, 'gambling, drug trafficking, prostitution, begging, vagrancy or debauchery'. Young offenders are usually dealt with in family rather than criminal courts. Family courts can place young people in residential settings, psychiatric hospitals and secure units, even beyond the national boundary. There are no formal review processes in place, but parents and minors can request to be heard by the family judge.

For serious offences, criminal law can apply from the age of 16 years. No mental health disposal of a minor has yet occurred in Luxembourg, which has no prisons or forensic

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psychiatric services for adolescents. Thus, gaps in services for young offenders exist, particularly for serious offenders with or without mental illness.

Conclusion

Luxembourg's mental health legislation incorporates many of the principles laid out by the WHO, including the emphasis on community care, least restrictive options, emphasis on assent and consent, and safeguards under which patients can challenge court decisions. Minors are usually detained using child protection legislation with therefore less specific guidance in relation to involuntary treatment.

Data availability

Data availability is not applicable to this article as no new data were created or analysed in this study.

Author contributions

Both authors contributed equally to this work.

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Declaration of interest

None.

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Mental health services in Luxembourg: an overview

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We describe mental health services in Luxembourg and how they have evolved over the past 50 years. Health services in Luxembourg are provided through a social health insurance-based system and mental health services are no exception. Additional services are offered through mixed-funding avenues drawing on social care budgets in the main. Luxembourg is closely connected with neighbouring countries, where a large proportion of its workforce live. No run-through medical training exists and the entire medical workforce, including psychiatrists, have trained in other countries. This is reflected in a rich but often non-uniform approach to the provision of psychiatric care.

Luxembourg is a small landlocked country in Western Europe bordered by France, Belgium and Germany. In 2020 the population was 626 100, comprising almost 170 different nationalities, with non-Luxembourgers accounting for nearly half of this number (47.4%).[1] The people, culture and languages are highly intertwined with those of neighbouring countries – official languages include Luxembourgish, French and German. Luxembourg's healthcare system and legislation are also heavily influenced by those of its neighbours.

Luxembourg is a founder member of the European Union (EU), and during the past decades has enjoyed unprecedented population and economic growth, moving from a steel production and agriculture-based economy to one concentrated predominantly on financial services and banking. When compared with other countries, Luxembourg ranks as one of the richest countries based on gross domestic product GDP) per capita at purchasing-power parity (PPP) per capita but with a slightly higher than average relative poverty rate.[2]

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